

Remarks

The following remarks are submitted to be fully responsive to the final Official Action dated February 25, 2009. This response is thus timely submitted within the three-month shortened statutory period for response. Should any fees be required, the Commissioner is authorized to charge Kagan Binder Deposit Account No. 50-1775 and thereafter notify us of the same. Reconsideration of all outstanding grounds of the rejection and allowance of the subject application are believed in order and respectfully requested.

Within the final Official Action, a rejection under 35 U.S.C. 112, second paragraph, is repeated. However, it is submitted that Applicants' previous response submitted October 8, 2008 included amended language within dependent claim 8 to obviate this rejection. Accordingly, withdrawal of this section 112, second paragraph, rejection is believed to be proper and is respectfully requested.

As to the prior art rejection of record, the Barbut reference is again relied upon by the Examiner in rejecting independent claim 1 and dependent claims 2-7 and 14-15 (as properly stated within the Office Action Summary). Dependent claims 8-13 are noted as containing allowable subject matter is rewritten in independent form. The Examiner's indication of allowable subject matter is appreciated.

By this response, Applicants submit amendments to independent claim 1 as further distinguishing from the device of the Barbut reference. As noted within Applicants' previous response, the Barbut reference merely discloses structure that supports the screen material including holding strings 316 as are provided prior to the screen with respect to the direction of blood flow in the vessel. These strings 316 act equally to permit blood flow and debris the same in both directions. Claim 1 now emphasizes the nature of the restriction element of the present invention as having the ability to change the opening size of the selective opening so that debris as carried within the blood can go through in the first direction and not back in a second direction. In accordance with this claim limitation, the opening can be completely closed or at least partially closed or reduced in size as a further limiting structure of the restriction element for preventing backflow of debris. No structure within the Barbut reference is capable of providing the relationship of structure and function as is presently claimed. The strings 316 may restrict a debris particle during backflow momentarily, but they do not act to change the opening or to close off any part of the opening that is provided between each string.

The Examiner's reconsideration of the obviousness-type double patenting rejection of record is also respectfully requested in light of the amended claim language of presently submitted claim 1. It is submitted that amended claim 1 recites at least the above-discussed aspect of the restriction element as distinct from the claims of parent patent no. 6,692,513.

Accordingly, it is submitted that presently pending claims 1-15 are currently in condition for allowance, a notice of which is earnestly solicited. If the Examiner finds any issue remaining after consideration of this response, the Examiner is invited to contact the undersigned, at the Examiner's convenience, in order to expedite any remaining prosecution.

Respectfully Submitted,

By:



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Dated: May 26, 2009